





**UNIVERSITY OF SOUTHERN COLORADO**

2200 Bonforte Boulevard  
OFFICE OF THE PRESIDENT

Pueblo, Colorado, 81001-4901  
719 549-2306

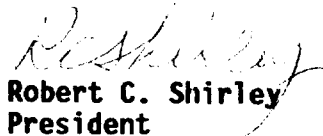
**September 2, 1993**

**Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
Washington, DC 20554**

**Dear Mr. Caton:**

**The attached constitutes a supplement to our application for an extension of our construction permit.**

**Sincerely,**

  
**Robert C. Shirley  
President**

**gg**

**Attachment**

## AMENDMENT

On September 8, 1992, the University of Southern Colorado (the "University"), licensee of Station KTSC(TV), Pueblo, Colorado and holder of an outstanding construction permit to relocate Station KTSC(TV)'s transmitter to Cheyenne Mountain (the "Permit"), and Sangre de Cristo Communications, Inc. ("SCC"), licensee of Station KOAA-TV, Pueblo, Colorado, filed a Joint Petition for Issuance of Notice of Proposed Rulemaking to Exchange Channels (the "Joint Petition") proposing an intraband channel swap between the University and SCC. Pursuant to the channel swap proposal, in addition to the use of Channel 5, the University would receive \$1 million to be used to further its educational broadcasting facilities and program certain technical equipment and, subject to FCC approval, the assignment of the license for Television Translator Station K30AA, Colorado Springs, Colorado. SCC would receive the use of Channel 8 including authority to use the transmitter site authorized under the Permit.

On February 16, 1993, the University filed an application requesting the extension of the Permit (the "Extension Application") indicating that substantial progress towards the authorized construction had not been made due to circumstances beyond its control -- namely, the pendency of the rulemaking requested by the Joint Petition. On March 23, 1993, the University filed a "Supplemental Statement" to the Extension Application detailing the efforts it had made towards the implementation of the Permit. The purpose of this Amendment is to report on further progress that the University has made towards construction and implementation of the Permit.

On July 13, 1993, the Commission issued a Notice of Proposed Rulemaking in response to the Joint Petition<sup>1</sup> indicating, as an initial matter, that a proposed swap between the University and SCC was in the public interest. The Commission, however, did not include the Permit as part of the swap proposal and indicated some concern about the University's

---

\*/ Notice of Proposed Rulemaking (Pueblo, Colorado), (the "Notice"), DA 93-742, MM Docket No. 93-191, released July 13, 1993.

\*/ In response to the exclusion of the Permit from the channel swap proposal presented in the Notice, on September 2, 1993, the University and SCC filed an application seeking the FCC's consent to the assignment of the Permit to SCC in connection with the channel swap proposal. Also pending before the Commission is a Joint Motion to Consolidate Proceedings filed by the University and SCC which requests that the Commission act on the Permit Assignment and Extension Applications in connection with its review of the channel swap proposal.

commitment to its implementation. See Notice, supra, ¶ 7, n.4. Although the University believed in good faith that its actions with respect to the Permit were fully rational and justified in light of the circumstances presented in response to the Notice and to confirm its often reiterated commitment to the Permit's implementation, it has taken further steps to implement the Permit in order to assure the Commission that it is interested in and committed to the relocation of the KTSC(TV) transmitter if the channel swap as proposed is not approved.

Specifically, the University has acquired an option to lease a transmitter site atop Cheyenne Mountain and space for its antenna on a master tower currently under construction. A copy of the executed Option Agreement along with the form of the negotiated lease is attached hereto as Exhibit 1. If the option is exercised, the initial monthly rental will be \$5,500. If SCC obtains authority to implement the Permit as the result of the channel swap, the lease can be assigned to SCC. (It should also be noted that even if the swap proposal had not been before the Commission, the Permit's extension would have been necessary because the construction of the master tower and transmitter building has not yet been completed.)

The University of Southern Colorado Foundation, on the University's behalf, has ordered transmission equipment from Dielectric Communications ("Dielectric") to be used for the modifications authorized under the Permit. As a condition to Dielectric's acceptance of the University's order, the University has paid a deposit equalling five percent (5%) of the total purchase order, or \$10,729.05. Attached hereto as Exhibit 2 is a copy of a letter reflecting the order for the equipment and Dielectric's acceptance of such order.

In sum, the Commission has before it substantial evidence demonstrating that the University has acted prudently in its efforts to implement and preserve the Permit. As indicated previously, the circumstances of the swap proposal alone warranted the University's postponement of the Permit's full implementation, and the University believed in good faith that its prosecution of the swap proposal sufficed to warrant restraint with respect to other steps regarding the Permit's implementation. By ordering equipment and obtaining an option to lease a transmitter site and tower space, the University has demonstrated its good faith intentions and continuing commitment to the Permit. The University submits that its cumulative efforts, particularly in light of the swap's pendency, clearly warrant the extension of the Permit. The Permit must be extended and nothing further should be necessary in the way of actual construction while the channel swap rulemaking is pending.

**EXHIBIT 1**

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is dated August 31, 1993, and entered into by and between CHEYENNE PROPAGATION COMPANY, whose address is P.O. Box 60277, Colorado Springs, Colorado 80960 ("Landlord") and UNIVERSITY OF SOUTHERN COLORADO, whose address is 2200 Bonforte Boulevard, Pueblo, Colorado 81001 (hereinafter "KTSC" or "Tenant").

### Recitals

A. Landlord is the owner of certain of real property situated in El Paso County, Colorado, as is more particularly described as:

The Southeast quarter of the Northwest quarter of Section 14, Township 15 South, Range 67 West of the 6th P.M.

(the "Property").

B. Tenant is currently leasing property from Landlord pursuant to a Lease Agreement dated April 27, 1982, and an Extension of Lease dated February 23, 1984 (the "Lease").

C. Landlord is constructing a 300 foot tower on the Property at 6169 Transmitter Lane on Cheyenne Mountain (the "Tower"). A contract for the construction of the Tower was entered into with Microflex Company, Inc. on September 11, 1992 (the "Contract"), and a building permit for the construction of the Tower was issued by the El Paso County Regional Building Department on October 6, 1992. Pursuant to the Contract, the Tower foundation was installed last fall, the steel for the Tower is to be delivered next week, and the Tower is expected to be completed and ready for occupancy by September 20, 1993. Additionally, Landlord is constructing a support building for the Tower (the "Building"), which will also be completed by November 1, 1993.

D. Tenant would like to have the opportunity to move to the new 300 foot Tower when it is completed, if Tenant can obtain the approval of the FCC to make the move.

E. Landlord is willing to grant to Tenant, and Tenant desires to obtain from Landlord, an option to lease space on the 300 foot Tower and in the adjoining support Building pursuant to the terms and conditions of this Agreement.

### Agreement

In consideration of the Recitals, the payment of the Option Fee (as hereinafter defined), and the mutual covenants and agreements of the parties contained herein, the parties hereby agree as follows:

1. Grant. Landlord hereby grants to Tenant an option to lease from Landlord (the "Option"), upon and subject to the terms and conditions set forth hereafter, adequate space on the 300 foot Tower at the location designated on Exhibit A attached hereto and incorporated herein by this reference, sufficient for Tenant's current operations as defined in the Lease, and space within Landlord's Building suitable for Tenant's existing equipment, as defined in the Lease, for the initial monthly rent of \$5,500.00. The terms of the Lease shall be substantially in the form of Exhibit B attached hereto and incorporated herein by this reference. The monthly rent will be effective for the first twelve months of the term on the Tower, but will be subject to annual escalation thereafter based on the greater of (1) six percent (6%) or (2) the percentage of change in the National Consumer Price Index (often referred to as the "Cost-of-Living Index"), published by the Bureau of Labor Statistics of the Department of Labor of the United States Government.

2. Fee. In consideration of this Option, Tenant will pay to Landlord an option fee of \$1,000.00 (the "Option Fee"). The Option Fee is not refundable.

3. Term. The term of this Option shall expire on October 31, 1993, unless Tenant, on or before that date, provides Landlord with a binding written election to exercise the Option, and pays Landlord two months' rent as a security deposit.

4. Exercise of Option to Lease. If Tenant provides Landlord with a binding election to exercise the Option within the time period specified herein, Tenant shall thereafter execute a new lease for premises on the 300 foot Tower, substantially in the form of Exhibit B attached hereto, and shall comply with all of the terms of the Lease, including the payment of the Security Deposit. Upon execution of the new lease for the 300 foot Tower, the existing Lease will be deemed terminated.

5. Default; Remedies. Time is of the essence hereof, and if any payment or any other condition hereof is not made, tendered, or performed as herein provided, there shall be the remedies set forth below. In the event a payment or any other agreement hereof is not made, tendered, or performed by Tenant, then this Agreement shall be null and void and of no effect, and both parties hereto shall be released from all obligations hereunder, and any deposit or payment made hereunder shall be retained on behalf of Landlord as liquidated damages, as Landlord's sole and exclusive remedy hereunder. In the event that Landlord fails to perform any covenant, agreement, or condition hereof as provided herein, then Tenant may, at its election, treat this Agreement as terminated, and all payments made hereunder (not including payments made pursuant to the Lease) shall be returned to Tenant. However, any termination of this Agreement shall not result in a termination of the Lease.



6. Recording. This Agreement may not be recorded by the parties.
7. Further Instruments. Each party hereto shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Agreement.
8. Governing Law. The parties hereto hereby expressly agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.
9. Headings. Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.
10. Entire Agreement - Alteration or Amendment. The entire agreement of the parties is set forth in the Lease and herein, and the parties are not bound by any agreements, understandings, conditions, or inducements otherwise than are expressly set forth and stipulated in the Lease and in this Agreement. No change, alteration, amendment, modification, or waiver of any of the terms or provisions hereof shall be valid unless in writing and signed by the parties.
11. Assignment. This Agreement shall be binding upon, and inure to the benefit of, Landlord and Tenant and their respective successors and permitted assigns. Tenant shall not have the right to assign this Agreement, in whole or in part, to any individual(s), corporation(s), general or limited partnership(s) or to any other business entity without the prior written consent of Landlord, which consent can be granted or withheld in Landlord's sole and absolute discretion.
12. Notices. All notices provided for hereunder shall be deemed given and received when (1) personally delivered or (2) 48 hours after the same is deposited in the United

States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party, or as to each party, at such other address as shall be designated by such party in a written notice to the other party:

TO LANDLORD: Cheyenne Propagation Company  
Post Office Box 60277  
Colorado Springs, Colorado 80960

WITH A COPY TO: Mulliken, Gleason & Weiner, P.C.  
Attn: Steven K. Mulliken  
102 South Tejon, Suite 700  
Colorado Springs, Colorado 80903

TO TENANT: University of Southern Colorado  
2200 Bonforte Boulevard  
Pueblo, Colorado 81001

13. Binding Effect. The covenants herein shall inure to the benefit and shall be binding upon the parties hereto and their respective heirs, personal representatives, and assigns.

14. Option. Notwithstanding references herein to "Landlord" and "Tenant," the parties intend to create an option by this Agreement.

Landlord:

CHEYENNE PROPAGATION CO., a Colorado corporation

[SEAL]

By:   
Harold C. Ingersoll, President

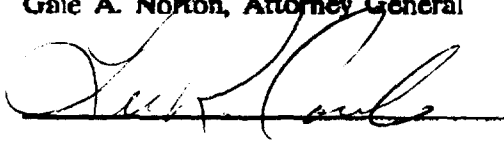
ATTEST:

FEIN# 84-0515254

\_\_\_\_\_  
Secretary

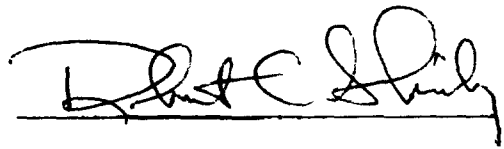
APPROVED:

STATE OF COLORADO  
Gale A. Norton, Attorney General

A handwritten signature in dark ink, appearing to read "Gale A. Norton", written over a horizontal line.


Tenant:

STATE BOARD OF AGRICULTURE

A handwritten signature in dark ink, appearing to read "R. H. E. Shively", written over a horizontal line.

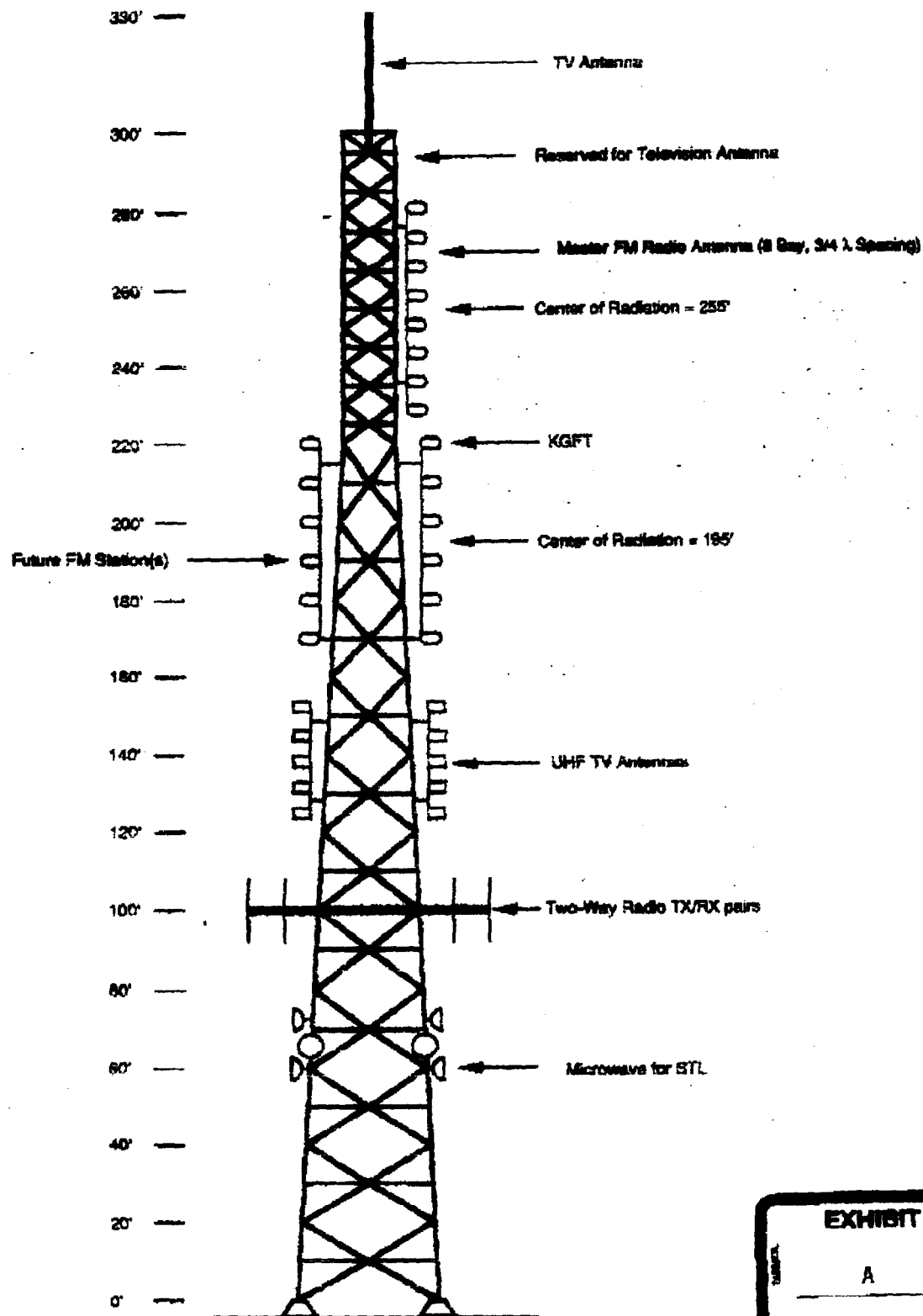
APPROVED:

DIVISION OF ACCOUNTS AND  
CONTROL  
Clifford Hall, State Controller

By: A handwritten signature in dark ink, appearing to read "B. Brando", written over a horizontal line.

**EXHIBIT A**  
**DIAGRAM OF THE TOWER AND PREMISES**

# Cheyenne Propagation Company



EXHIBIT

A

New Self-Supporting Antenna Tower on Cheyenne Mountain

L E A S E

THIS LEASE AGREEMENT, (the "Lease"), made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1993, between CHEYENNE PROPAGATION CO., a Colorado Corporation, P. O. Box 60277, Colorado Springs, Colorado 80960, herein called "Landlord", and THE STATE BOARD OF AGRICULTURE, in the interest of the University of Southern Colorado, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, as to Tenant, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number \_\_\_\_\_, G/B/L Account Number \_\_\_\_\_ Contract Encumbrance Number C-\_\_\_\_\_ or in the Account(s) reflected on the attached COFRS printout.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Demise. Landlord, in consideration of the rents to be paid and agreements to be performed, hereby leases to the Tenant suitable premises sufficient for the purpose of this Lease situated on one of the peaks of Cheyenne Mountain in the County of El Paso and State of Colorado, located within the following described political subdivision:

The Southeast quarter of the Northwest quarter of Section 14, Township 15 South, Range 67 West of the 6th p.m. Landlord's antenna tower on the leased premises has polar coordinates of latitude 38° 44' 43.3"N and longitude 104° 51' 41.3".

2. Premises. The leased property shall consist of suitable space within Landlord's building located at 6171 Transmitter Lane (the "Building") in an area therein designated by Landlord, and suitable space on Landlord's 300 foot tower (the "Tower") at the location designated on Exhibit A attached hereto, which Tower is located at 6169 Transmitter Lane and is adjacent to the Building, together with the right of ingress and egress to said leased property (collectively the "Premises"). Tenant shall not be permitted to make any alteration to or expansion of Landlord's Building, Tower or other existing facilities without Landlord's express prior written consent, which consent can be granted or denied in the Landlord's sole and absolute discretion, and subject to renegotiation of this Lease and the rentals payable hereunder. Tenant acknowledges that other tenants will be occupying space within Landlord's Building and on Landlord's Tower.

3. Term. Subject to the limitations, terms and conditions set forth herein, the term of this Lease (the "Term") shall be for a period of ten (10) years beginning on \_\_\_\_\_, 199\_\_\_\_, and terminating \_\_\_\_\_, 199\_\_\_\_. If Tenant holds over after the said Term with the consent of Landlord, express or implied, such tenancy shall be from month-to-month only and shall not be a renewal hereof, and Tenant shall pay the rent and all the other charges at 100% of the rate in effect as of the expiration of the Term, and shall also comply with all of the terms, covenants, conditions, provisions and agreements of this Lease for the time during which Tenant holds over. Landlord and Tenant hereby agree to give the other party thirty (30) days' written notice of termination of this month to month tenancy.

4. Rent. Subject to the limitations, terms and conditions set forth herein, Tenant agrees to pay Landlord a total initial annual rental of \_\_\_\_\_

( \$ \_\_\_\_\_ .00 ), at the monthly rate of \_\_\_\_\_ Dollars ( \$ \_\_\_\_\_ .00 ). The rent shall be payable monthly in advance, without offset or deduction whatsoever, beginning on the first day of \_\_\_\_\_, 199\_\_\_\_, and on the first day of each and every month thereafter during the Term. Any change in the number of frequencies used by Tenant, or in the permitted use of the Premises, will be subject to Landlord's prior written consent, to be granted or denied in Landlord's sole and absolute discretion, and subject to the renegotiation of the terms of this Lease, including the rental payable hereunder. Additionally, the annual rental rate shall be subject to annual increases in accordance with Article 5 hereinafter. Said rent shall be payable to Landlord at P. O. Box 60277, Colorado Springs, CO 80960, or at such other address as Landlord may hereafter direct. Any payment of a lesser amount than the full monthly rental required hereunder will be considered as a payment on account and Landlord will be entitled to accept it as a partial payment on account regardless of any notation by Tenant on a check or otherwise that it is payment in full.

5. Rent Escalation. The annual rental hereunder will be increased (but not decreased) at the end of each twelve-month period during the Term with the first increase to be effective \_\_\_\_\_ 199\_\_\_\_, by an amount calculated by multiplying the annual rental currently in effect by the greater of (1) six percent (6%) or (2) the percentage of change in the National Consumer Price Index (often referred to as the "Cost-of-Living Index"), published by the Bureau of Labor Statistics of the Department of Labor of the United States Government, from the Index during the current twelve-month period for the month in which payment of rent commences under this Lease and the Index for the last



month of said twelve-month period, which amount, when added to the current amount of annual rent, will be the annual rent during such succeeding twelve-month period.

6. Security Deposit. Tenant shall not be required to remit a security deposit to Landlord.

7. Use. The use of the Premises and the operations to be conducted by Tenant on the Premises are expressly limited to operation of a \_\_\_\_\_ powered television station and its STL's, remote pickups and inter-city microwave links associated therewith, identified as \_\_\_\_\_, at frequency \_\_\_\_\_. Any change of the operations of Tenant to broadcast HDTV will require Landlord's prior written consent, including a renegotiation of the rentals due hereunder. As part of the use of the Premises permitted hereunder, Tenant shall be entitled to install and maintain on the Premises the equipment listed on Exhibit B attached hereto and incorporated herein. Tenant shall clearly and conspicuously mark the equipment itemized in Exhibit B with Tenant's name and frequency number(s). Tenant shall also post a copy of its Federal Communications Commission ("FCC") license on its equipment upon installation. Tenant will provide Landlord at the commencement of this Lease and on the first day of each calendar year following the commencement of the Term with a listing of the frequency or frequencies used by Tenant hereunder and the transmitter power output ("TPO") and effective radiated power ("ERP"). No expansion or change whatsoever of said described operations shall be permitted without Landlord's prior written approval, which can be granted or denied in Landlord's sole and absolute discretion, and subject to the prior renegotiation of this Lease including the rentals payable hereunder. In the event of any violation by Tenant of the terms and provisions

herein set forth, such violation shall constitute an Event of Default under this Lease entitling Landlord to exercise the remedies provided for in Article 14 hereinafter.

8. Assignment and Subletting. Tenant shall not assign this Lease nor its facilities nor sublet all or any portion of the Premises nor let anyone other than Tenant use all or any portion of the Premises without the express written consent of Landlord, which consent can be withheld in Landlord's sole and absolute discretion.

9. Interference. It is understood that Landlord is using its property as a communications center for radio, television and/or microwave transmitting and receiving systems. Tenant shall install and operate Tenant's systems and facilities so as not to interfere with other tenants' existing systems. To achieve this goal and requirement, Tenant shall comply with the following requirements:

a. Tenant shall notify Landlord of all transmit and receive frequencies, transmitter power output ("TPO"), and effective radiated power ("ERP") before making any new installations or modifications to existing installations.

b. Landlord must be notified of any change in antenna systems.

c. In order to prevent or eliminate such possible interference, Tenant agrees, at Tenant's expense, when it is necessary, to install cavity-type bandpass filters, notch filters, isolators/circulators or traps and any other "state-of-the-art" equipment which may be developed to reduce, avoid or eliminate any present or potential interference.

d. Tenant shall maintain and repair all systems, equipment and facilities as often as may be necessary to prevent any interference.

e. Landlord encourages Tenant (and others) to resolve potential or real interference problems between themselves. Additionally, Tenant shall cooperate with

Landlord in any efforts to identify the source of and eliminate any interference problems that may exist, including turning power down when requested to by Landlord in order to study interference.

f. When Landlord becomes aware of a potential interference problem caused directly or indirectly, wholly or partially, by Tenant's equipment or operations, Landlord may require Tenant, at Tenant's expense, to perform a radio frequency interference study, including a radio frequency measurements, to identify the problem or show that the potential problem is not caused directly or indirectly, wholly or partially, by Tenant's equipment or operations. Such a study shall be performed by an objective licensed professional engineer, FCC general radiotelephone license holder, or certified electronics technician, and shall be satisfactory to Landlord, in Landlord's reasonable discretion. The equipment, methods, and frequency band of said interference study shall be selected based on the nature of the problem. Tenant shall provide Landlord with a written report of the study and measurements. Tenant shall, at Tenant's expense, make any changes or corrections required by said report.

g. If Tenant's equipment or operations cause radio frequency interference, as determined by Landlord in Landlord's reasonable discretion, and if it is not eliminated within ten (10) days after written notice from Landlord, Landlord may, at Tenant's expense, terminate said interference by any means Landlord deems necessary, including termination of this Lease. Landlord shall enforce this same concept to the extent permitted in leases with other tenants as to interference being received by Tenant's operations or equipment.

10. Utilities. A power line for electric power is available at the Premises, and Tenant agrees to utilize the power line to purchase power from the City of Colorado Springs at the prevailing rate at Tenant's expense.

11. Alterations by Tenant. Tenant will not make any alterations, improvements or other installations in, on or to the Premises or any part thereof or to Landlord's Tower or property unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by an architect or other duly qualified person and shall have obtained Landlord's approval thereof. If such approval is granted, Tenant shall cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities, using first grade materials, without interference with or disruption to the operations of other tenants or other occupants of Landlord's property. All such work shall comply with all applicable governmental codes, rules, regulations and ordinances. Tenant will ensure that no mechanic's liens attach to the Premises or Landlord's property.

12. Trash Removal. Tenant shall remove its trash from Cheyenne Mountain and shall cooperate with Landlord and other tenants in keeping the grounds of Landlord in a clean and sanitary condition in compliance with U. S. Forest Service rules and standards.

13. Default and Remedies. The following will constitute events of default and will entitle Landlord to the remedies listed below.

a. It shall, at Landlord's option, be deemed an "Event of Default" if:

(1) Tenant shall fail to pay when due any installment of rent or any other sum payable by Tenant pursuant to this Lease and such default continues for 10 days or more after Landlord gives written notice of such default;

(2) Tenant shall fail to perform or observe any other term, covenant, condition, provision or agreement of this Lease or the Master Antenna System Joint Maintenance and Utilization Agreement, and Tenant shall fail to remedy said default immediately after receipt by Tenant of written notice specifying said default from Landlord where such default presents a present or imminent health or safety danger or interferes with other tenant's operations, otherwise within 30 days after receipt of such notice; or

(3) The Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant without Landlord's prior written consent.

b. In the event that Landlord elects, pursuant to subsection a. of this Article, to declare an Event of Default, then Landlord shall have the right to give Tenant three days' notice of its intention to end the Term of this Lease, and thereupon, at the expiration of said three days, the Term of this Lease shall expire as fully and completely as if that day were the day herein definitely fixed for the expiration of the Lease Term, and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. If Tenant fails to so quit and surrender the Premises as aforesaid, Landlord shall have the right, without notice, to re-enter the Premises either by force or otherwise and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or otherwise, and remove their effects and regain possession of the Premises (but Landlord shall not be obligated to effect such removal).

c. If there is an Event of Default by Tenant (and regardless of whether Tenant has abandoned the Premises), this Lease shall not terminate unless Landlord, at Landlord's option, gives written notice terminating this Lease. For so long as this Lease so

continues in effect, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due hereunder. For the purposes of this subsection c. the following shall not constitute termination of this Lease: (1) acts of maintenance or preservation or efforts to relet the Premises, or (2) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease, or (3) service of a statutory notice by Landlord upon Tenant requiring payment of rent or possession of the Premises.

d. In the event of termination of this Lease as a result of Tenant's breach of this Lease, Landlord shall have the right:

(1) To remove any and all persons and property from the Premises, with or without legal process, and pursuant to such rights and remedies as the laws of the State of Colorado shall then provide or permit, but Landlord shall not be obligated to effect such removal. Said property may, at Landlord's option, be stored or otherwise dealt with as such laws may then provide or permit, including but not limited to the right of Landlord to sell or otherwise dispose of the same or to store the same, or any part thereof, in a warehouse or elsewhere at the expense and risk of and for the account of Tenant.

(2) To recover from Tenant damages, which shall include but shall not be limited to: (a) such expenses as Landlord may reasonably incur for legal expenses, attorneys' and other professional fees, court costs, for reletting, for putting the Premises in good order, condition and repair, and for keeping the Premises in good order, condition and repair; and (b) the equivalent of the amount of rent and other charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting, after deducting all of Landlord's expenses in connection with such reletting.

All remedies shall be subject to the terms, limitations and conditions of Paragraph 35. Tenant shall pay the amount of such damages to Landlord monthly on the days on which the rent would have been payable under this Lease if this Lease were still in effect, and which Landlord shall be entitled to recover from Tenant as each monthly deficiency shall arise.

(3) In lieu of collecting any or further monthly deficiencies as set forth above, Landlord shall be entitled to recover from Tenant, as liquidated damages for such breach, in addition to any damages becoming due under subsection (2)(a), an amount equal to the difference by which the present value of the rent, and all other sums due Landlord hereunder, from the date of such breach to the date of the expiration of the original Term demised exceeds the present reasonable rental value of the Premises for the same period, both discounted to the date of such breach at a rate of not more than 5% per annum, to be determined by Landlord.

(4) To enforce, to the extent permitted by the laws of the State of Colorado then in force and effect, any other rights or remedies set forth in this Lease or otherwise applicable hereto by operation of law or contract. During any period while Tenant is in default, Landlord will not be obligated to provide any facilities or services to Tenant or the Premises, and Landlord will be entitled to interrupt any such facilities or services, including provision of any power to the Premises.

c. In the event of a breach or threatened breach by Tenant of any of the terms, covenants, conditions, provisions or agreements of this Lease, Landlord shall additionally have the right of injunction. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, at law or in equity.

f. Landlord shall have the right to add to the amount of any payment which is required to be made by Tenant and which is overdue by 15 days or more, an interest charge equal to 1.5% per month of the amount due for each month the payment remains past-due, and any failure by Tenant to pay such amount within 10 days after demand by Landlord shall be an additional Event of Default under this Lease. This provision for an interest charge on past-due payments shall be in addition to all of Landlord's other rights and remedies available under this Lease or at law.

14. Insurance. Landlord shall not be responsible nor liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons other than Landlord occupying space around or adjoining the Premises. Tenant is a state agency which is covered by the Governmental Immunity Act and the Risk Management Act of the State of Colorado.

15. Access. Landlord shall have access to the Premises at all reasonable times for the purpose of the inspection thereof, and Tenant shall at all times provide Landlord with current keys to the Premises to facilitate such access.

16. Compliance with Laws, Regulations and Restrictions. No hunting shall be allowed or performed by the Tenant, its agents, servants and employees, including bow and arrow hunting, on or around the Premises, and no discharge of firearms shall be allowed, including target practice. No trees or firewood shall be cut or removed from the Premises or from Landlord's property. Tenant agrees to comply at all times with any and all federal, state and local laws and regulations pertaining to the Premises or to Tenant's operations thereon including the FCC radiation regulations and requirements and any other environmental laws and regulations. Any structure owned by Tenant and erected on a



permanent foundation on Landlord's land shall, at Landlord's election, become the property of Landlord. If Landlord does not elect to become the owner of Tenant's structure, Landlord shall notify Tenant of Landlord's decision and Tenant, at Tenant's expense, shall remove the structure. If Tenant removes any structure from the Premises, Tenant must restore the land to its natural condition prior to such installation. Tenant shall also comply with any and all reasonable rules and regulations which Landlord may adopt from time to time for all tenants to insure the safety and effective operations of broadcasters on Cheyenne Mountain.

17. Condemnation. If the whole of the Premises shall be taken or condemned for all or any portion of the Term by any competent authority for any public or quasi-public use or purpose, or transferred by agreement in connection with such public or quasi-public use or purpose, then the Term of this Lease shall, at the option of either party, terminate as of the date when the possession was taken for such use or purpose, and without apportionment of the award, such that the entire award is paid to Landlord. The then current rental, however, shall in any such case be apportioned. Tenant hereby expressly assigns to Landlord any award which may be made in any taking or condemnation.

18. Landlord's Ownership. Landlord warrants and represents itself to be the owner of, or the authorized representative or agent of the owner of, the leased Premises in the form and manner as stated herein, and during the term of this Lease covenants and agrees to warrant and defend Tenant in the quiet, peaceable enjoyment and possession of the leased Premises. In the event of any dispute regarding Landlord's ownership, Landlord shall immediately, upon request from and at no cost to Tenant, furnish proof thereof by delivering to Tenant an "Ownership and Encumbrance Letter" issued by a properly qualified title insurance company.